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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

**NORTHWEST ENVIRONMENTAL
ADVOCATES**, an Oregon non-profit
corporation,

Plaintiff,

v.

**UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY**,

Defendant.

NO.

COMPLAINT

Pursuant to Clean Water Act Section
505(a)(2), 33 U.S.C. § 1365(a)(2)

NATURE OF THE CASE

1. This is a civil action brought by plaintiff Northwest Environmental Advocates (“NWEA”) challenging a failure by defendant United States Environmental Protection Agency (“EPA”) to discharge its nondiscretionary duty to review and either approve or disapprove a proposed Total Maximum Daily Load (“TMDL”) submitted by the State of Washington for the Deschutes River, Percival Creek, and tributaries to Budd Inlet (herein, “Deschutes TMDL”).

1 incorporated under the laws of Oregon in 1981 and organized under section 501(c)(3) of the
2 Internal Revenue Code. NWEA's principal place of business is Portland, Oregon. NWEA's
3 mission is to work through advocacy and education to protect and restore water and air quality,
4 wetlands, and wildlife habitat in the Pacific Northwest, including Washington. NWEA employs
5 advocacy with administrative agencies, community organizing, strategic partnerships, public
6 record requests, information sharing, lobbying, and litigation to ensure better implementation of
7 the laws that protect and restore the natural environment. NWEA has participated in the
8 development of CWA programs in the State of Washington for many years, including the state's
9 TMDL program by, *inter alia*, having brought suit in 1991 against EPA for its failure to establish
10 TMDLs for the State of Washington and serving on EPA's TMDL federal advisory committee
11 from 1996 to 1998.
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14 7. NWEA's members regularly use and enjoy the waters of the Deschutes River
15 basin, Capitol Lake, and Budd Inlet. NWEA's members regularly use and enjoy these waters and
16 adjacent lands and have definite future plans to continue using them for recreational, scientific,
17 aesthetic, spiritual, conservation, educational, employment, and other purposes. Many of these
18 interests revolve around viewing sensitive salmonid species and other aquatic species that are
19 under threat by pollution in the covered waters. The use and enjoyment that NWEA's members
20 derive from viewing these species, and otherwise recreating on or near and enjoying the waters of
21 the Deschutes River basin, Capitol Lake, and Budd Inlet, is diminished by the effects of pollution
22 in the covered waters, including pollution relating to temperature, human pathogens, dissolved
23 oxygen, pH, nutrients, and fine sediment. NWEA's members would derive more benefits and
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1 enjoyment from their use of these waters if these pollutants were not adversely affecting water
2 quality and aquatic and aquatic-dependent wildlife in these waters.

3 8. Some of NWEA's members derive or used to derive recreational and aesthetic
4 benefits by fishing in the Deschutes River. These members have curtailed their fishing in the
5 Deschutes River, or no longer fish in the River, due in part to concerns regarding pollutants and
6 their effect on fisheries, including concerns relating to high water temperatures, low dissolved
7 oxygen, and high levels of fine sediment and human pathogens.

9 9. Successful completion of a TMDL to address these pollution problems is a critical
10 step in fully implementing the goals of the CWA for these waters, fully protecting salmonids and
11 other aquatic and aquatic-dependent species, and improving water quality in the covered and
12 affected waters. EPA's failure to approve or disapprove the TMDL puts these species at risk and
13 threatens or negatively affects the interests of NWEA's members.

15 10. The recreational, aesthetic, conservation, employment, scientific, educational,
16 spiritual, and other interests of NWEA and its members have been, are being, and unless relief is
17 granted, will continue to be adversely affected and irreparably injured by EPA's failure to comply
18 with the CWA. NWEA's injury-in-fact is fairly traceable to EPA's conduct and would be
19 redressed by the requested relief.

21 11. Defendant UNITED STATES ENVIRONMENTAL PROTECTION AGENCY is
22 the federal agency charged with administration of the CWA, and specifically with approving or
23 disapproving state TMDL submissions under Section 303(d)(2) of the CWA, 33 U.S.C. §
24 1313(d)(2).

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LEGAL BACKGROUND

The Clean Water Act and Water Quality Standards

12. Congress adopted amendments to the CWA in 1972 in an effort “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a). The primary goal of the CWA is to eliminate the discharge of pollutants into navigable waters entirely; also established is “an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife.” *Id.* § 1251(a)(1–2).

13. To meet these statutory goals, the CWA requires states to develop water quality standards that establish, and then protect, the desired conditions of each waterway within the state’s regulatory jurisdiction. 33 U.S.C. § 1313(a). Water quality standards must be sufficient to “protect the public health or welfare, enhance the quality of water, and serve the purposes of [the CWA].” *Id.* § 1313(c)(2)(a). Water quality standards establish the water quality goals for a waterbody. 40 C.F.R. §§ 131.2, 131.10(d). EPA is charged with approving or disapproving a state’s water quality standards. *See* 33 U.S.C. § (c)(2)(a), (3).

14. Among other things, water quality standards serve as the regulatory basis for establishing water quality-based controls over point sources, as required by sections 301 and 306 of the CWA, 33 U.S.C. §§ 1311 & 1316. A point source is a “discernable, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well . . . from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14). Point source discharges are regulated under National Pollutant Discharge Elimination System (“NPDES”) permits, which require point sources to meet both technology-based effluent limitations and “any more stringent

1 limitation . . . necessary to meet water quality standards.” 33 U.S.C. § 1311(b)(1)(C). Water
2 quality standards are thus integral to the regulation of point source pollution.

3 15. Water quality standards also are used to establish measures to control nonpoint
4 sources pollution. Unlike point source pollution, nonpoint source pollution is generally
5 considered to be any pollution that cannot be traced to a single discrete conveyance. Examples
6 include runoff from agricultural or forestry lands and increased solar radiation caused by the loss
7 of riparian vegetation. Congress did not establish a federal permitting scheme for nonpoint
8 sources of pollution, such as pollution from timber harvesting and agriculture. Instead, Congress
9 assigned states the task of implementing water quality standards for nonpoint sources, with
10 oversight, guidance, and funding from EPA. *See, e.g.*, 33 U.S.C. §§ 1288, 1313, 1329. Even so,
11 water quality standards apply to all pollution sources, point and nonpoint alike. “[S]tates are
12 required to set water quality standards for *all* waters within their boundaries regardless of the
13 sources of the pollution entering waters.” *Pronsolino v. Nastri*, 291 F.3d 1123, 1127 (9th Cir.
14 2002) (emphasis in original).

17 *Total Maximum Daily Loads*

18 16. In addition to serving as the regulatory basis for NPDES permits and non-point
19 source controls, water quality standards are the benchmarks by which the quality of a waterbody
20 is measured. In particular, water bodies that do not meet applicable water quality standards, or
21 cannot meet applicable standards after the imposition of technology-based effluent limitations on
22 point sources, are deemed to be “water quality limited” or “impaired” and placed on a list of such
23 waters compiled under Section 303(d)(1)(a) of the CWA (known colloquially as the “303(d)
24 list”). *See* 33 U.S.C. § 1313(d)(1)(A); 40 C.F.R. § 130.2(j). States must then develop TMDLs for
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1 all 303(d)-listed waters in order to establish the scientific basis for cleaning up water pollution
2 that exceeds water quality standards.

3 17. A TMDL is the total daily loading of pollutants for a particular waterbody or
4 segment. *See* 40 C.F.R. §130.2(i). A TMDL “shall be established at a level necessary to
5 implement the applicable water quality standards with seasonal variation and a margin of safety
6 which takes into account any lack of knowledge concerning the relationship between effluent
7 limitations and water quality.” 33 U.S.C. § 1313(d)(1)(C). The total amount of pollutants that
8 may enter a waterbody while still meeting water quality standards is called “loading capacity.” 40
9 C.F.R. § 130.2(f). TMDLs for individual water bodies or segments are often bundled together by
10 basin, subbasin, or watershed in the same analytical document.

11 18. After calculating a waterbody’s loading capacity, a TMDL then distributes
12 portions of the total loading capacity to individual sources of pollution or sectors of pollution
13 sources. These allocations include both “load allocations” and “wasteload allocations,” for point
14 and nonpoint sources of pollution respectively. 40 C.F.R. § 130.2(i). A wasteload allocation is
15 “[t]he portion of a receiving water’s loading capacity that is allocated to one of its existing or
16 future point sources of pollution.” *Id.* at § 130.20(h). A load allocation is “[t]he portion of a
17 receiving water’s loading capacity that is attributed either to one of its existing or future nonpoint
18 sources of pollution or to natural background sources.” *Id.* at § 130.20(f). In essence, the purpose
19 of load and wasteload allocations is to allocate the total amount of pollution that may enter a
20 waterbody between all the sources of pollution, including both point and nonpoint sources of
21 pollution, thereby restricting pollution inputs sufficiently to attain and maintain water quality
22 standards.
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1 exceedances result in a failure to attain the Clean Water Act’s goal of achieving water quality that
2 provides for protection and propagation of fish, shellfish, and wildlife and recreation in and on
3 the water.

4 26. For example, excess temperature can lead to depressed survival rates among
5 salmonids due to adverse physiological and behavioral changes such as increased metabolic rates,
6 reduced swimming performance, impairment of predator avoidance, and increased incidence of
7 disease. Temperature often has a synergistic or additive effect by increasing the toxicity of other
8 pollutants. Temperature also contributes to lower levels of dissolved oxygen in streams. Low
9 dissolved oxygen, in turn, can have a number of deleterious effects on salmonids and other
10 aquatic organisms, including decreased growth rates, decreased swimming ability, increased
11 susceptibility to disease, and increased sensitivity to other environmental stressors and pollutants.
12 Adverse changes to the pH of a waterbody can increase the harmful effects of water-borne toxics,
13 particularly metals common in discharges of stormwater runoff. And too much fine sediment can
14 lead to depressed fish stocks by, *inter alia*, smothering fish redds and lowering intergravel
15 dissolved oxygen levels. For all of these reasons, achieving Washington’s water quality standards
16 for these parameters is a critical component of the CWA’s goal of achieving water quality that
17 allows for human recreation and provides for the protection and propagation of fish, shellfish, and
18 wildlife. *See* 33 U.S.C. § 1251.
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1 27. Since at least the late 1980s, pollution in the Deschutes River basin and Budd Inlet
 2 has attracted the attention of federal, state, and local governments.¹ Many of the waters at issue in
 3 this lawsuit, including the Deschutes River, were added to Washington's 303(d) list of impaired
 4 waters as early as 1996 for impairments relating to excess temperature, fecal coliform, dissolved
 5 oxygen, and pH, and on later lists for fine sediment. By at least 2002, Ecology began work on a
 6 TMDL to address these impairments, as well as related impairments in Capitol Lake and the
 7 marine waters of Budd Inlet. Over the next several years, Ecology published detailed studies on
 8 the sources and severity of the impairments and the sources of the pollutants, and plans to remedy
 9 them through the TMDL process.² These studies confirmed that the impairments are caused, in
 10 large part, by anthropogenic impacts throughout the basin, including municipal discharges of
 11 treated wastewater; decreased riparian vegetation due to logging and development; deteriorating
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15 _____
 16 ¹ See U.S. Env'tl. Prot. Agency, *Budd Inlet Bay Action Program: 1991 Action Plan* (July
 17 1991) (reporting, *inter alia*, that EPA had identified eutrophication in southern Budd Inlet as a
 high priority as early as 1988).

18 ² See, e.g., Washington Dept. of Ecology, *Quality Assurance Project Plan – Deschutes*
 19 *River, Capitol Lake, and Budd Inlet Temperature, Fecal Coliform Bacteria, Dissolved Oxygen,*
 20 *pH, and Fine Sediment Total Maximum Daily Load Study* (Feb. 2004, Pub. No. 04-03-103);
 Ecology, *Lower Deschutes and Budd Inlet tributaries Wet Weather Monitoring Plan* (April
 21 2004); Ecology, *Assessment of Surface Water / Groundwater Interactions and Associated*
 22 *Nutrient Fluxes in the Deschutes and Percival Creek Watersheds, Thurston County* (Jan. 2007,
 Pub. No. 07-03-002); Ecology, *Interim Results from the Budd Inlet, Capitol Lake, and Deschutes*
 23 *River Dissolved Oxygen and Nutrient Study* (April 2007); Ecology, *Final Reconnaissance Study*
 24 *Plan for Deschutes River / Capitol Lake / Budd Inlet Total Maximum Daily Loads* (July 2003);
 Ecology, *Deschutes River, Capitol Lake, and Budd Inlet Temperature, Fecal Coliform Bacteria,*
 25 *Dissolved Oxygen, pH, and Fine Sediment Total Maximum Daily Load Technical Report: Water*
 26 *Quality Study Findings* (June 2012, Pub No. 12-03-008); Ecology, *Deschutes River, Capitol*
Lake, and Budd Inlet Temperature, Fecal Coliform Bacteria, Dissolved Oxygen, pH, and Fine
Sediment Total Maximum Daily Load Technical Report: Water Quality Study Findings (June
 2012, Pub No. 12-03-008).

1 sewer infrastructure; improperly maintained, poorly located, or failing on-site septic systems;
2 domestic animals; fertilizers and manure; stormwater runoff; and road building.

3 28. Finally, 13 years after it started, in September 2015, Ecology had completed a
4 draft TMDL, one that covered the fresh and marine waters of the basin including Budd Inlet. *See*
5 Ecology, *Deschutes River, Capitol Lake, and Budd Inlet Total Maximum Daily Load Study*
6 *Supplemental Modeling Scenarios* (Sept. 2015). Rather than submit the TMDL to EPA, however,
7 by December of that year, Ecology decided to split the Deschutes basin from Capitol Lake and
8 Budd Inlet, claiming that it would prepare a TMDL for the downstream portion of the watershed
9 later.

10
11 29. In December of 2015, after removing Budd Inlet and Capitol Lake, Ecology
12 submitted the Final Deschutes TMDL to EPA for review under Section 303(d)(2) of the CWA, 33
13 U.S.C. § 1313(d)(2). *See* Washington Department of Ecology, *Deschutes River, Percival Creek,*
14 *and Budd Inlet Tributaries Temperature, Fecal Coliform Bacteria, Dissolved Oxygen, pH, and*
15 *Fine Sediment Total Maximum Daily Load: Water Quality Improvement Report and*
16 *Implementation Plan – FINAL* (Dec. 2015, Pub. No. 15-10-012). The TMDL was issued after
17 extensive public input and is intended to remedy water quality impairments in the Deschutes
18 River and other freshwater tributaries to Budd Inlet.

19
20 30. To date, however, EPA has failed to take action on the Deschutes TMDL, which
21 has been awaiting EPA approval or disapproval for over 22 months

22
23 31. Now, over two decades since the waters were first listed as impaired and 15 years
24 since Ecology began developing the TMDL, the Deschutes River, its tributaries, and other Budd
25 Inlet tributaries continue to violate water quality standards, continue to contribute to downstream
26

1 pollution in Budd Inlet and the Puget Sound, and lack the critical protections that the TMDL aims
2 to put in place to achieve Washington's water quality standards and protect its designated uses.

3 32. In short, EPA has failed to either approve or disapprove the Deschutes TMDL
4 within 30 days as required Section 303(d)(2), 33 U.S.C. § 1313(d)(2).
5

6 33. To NWEA's knowledge, EPA has no plans to approve or disapprove the TMDL
7 any time in the foreseeable future.

8 **CLAIM FOR RELIEF**

9 ***Failure to Act on the Deschutes TMDL, 33 U.S.C. §1365(a)(2)***

10 34. Plaintiff NWEA realleges all preceding paragraphs.

11 35. Section 303(d)(2) of the CWA requires EPA to either approve or disapprove
12 TMDLs within thirty days after submission by a state. See 33 U.S.C. § 1313(d)(2). EPA's duty to
13 act on TMDLs within thirty days of submission is a nondiscretionary duty within the meaning of
14 section 505 of the CWA, 33 U.S.C. § 1365(a)(2), the Act's citizen suit provision.
15

16 36. Nearly two years have elapsed since the Washington Department of Ecology
17 submitted the Deschutes TMDL for EPA's review. To date, EPA has neither approved nor
18 disapproved the Deschutes TMDL under section 303(d) of the CWA.

19 37. In failing to either approve or disapprove the Deschutes TMDL under section
20 303(d) of the CWA, EPA failed to perform a nondiscretionary duty within the meaning of the
21 CWA citizen suit provision, 33 U.S.C. § 1365(a)(2).
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PRAYER FOR RELIEF

WHEREFORE, plaintiff Northwest Environmental Advocates respectfully requests that this Court:

A. Declare that EPA has violated its nondiscretionary duty under 33 U.S.C.

§1313(d)(2) to approve or disapprove the Deschutes TMDL within 30 days of submission;

B. Enter an order directing EPA to approve or disapprove the TMDL within 30 days of the Court’s decision;

C. Award NWEA its reasonable costs and attorneys’ fees under 33 U.S.C. §1365(d);

and

D. Grant such other relief as the Court deems just and proper.

DATED this 6th day of November, 2017.

Respectfully submitted,

BRICKLIN & NEWMAN, LLP

By: s/ Bryan Telegin

Bryan Telegin, WSBA No. 46686
1424 Fourth Avenue, Suite 500
Seattle, WA 98101
Telephone: (206) 264-8600
Fax: (206) 264-9300
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EARTHRISE LAW CENTER

By: s/ Lia Comerford

Lia Comerford, *pro hac vice* application forthcoming
Lewis & Clark Law School

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E-mail: comerfordl@lclark.edu

*Counsel for Plaintiff Northwest Environmental
Advocates*

EXHIBIT 1



BRICKLIN & NEWMAN LLP
lawyers working for the environment

Reply to: Seattle Office

August 23, 2017

*VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED*

Scott Pruitt, Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Jefferson Beauregard Sessions III, Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

Re: Notice of Intent to Sue for Failure to Perform Mandatory Duties Pursuant to the Clean Water Act Relating to Washington's Deschutes River, Percival Creek, and Budd Inlet Tributaries TMDL

Dear Mr. Pruitt and Mr. Sessions:

This letter provides notice that Northwest Environmental Advocates ("NWEA") intends to sue the U.S. Environmental Protection Agency ("EPA") under Section 505(a)(2) of the Clean Water Act ("CWA") for failure to approve or disapprove Washington's Deschutes River, Percival Creek, and Budd Inlet Tributaries Temperature, Fecal Coliform, Bacteria, Dissolved Oxygen, pH, and Fine Sediment Total Maximum Daily Load (Washington Department of Ecology Publication No. 15-10-012, available at <https://fortress.wa.gov/ecy/publications/documents/1510012.pdf>). We refer to this document as the "Deschutes River TMDL."

Washington submitted the Deschutes River TMDL to EPA in December of 2015. More than thirty days have elapsed since that time, but EPA has yet to either approve or disapprove the proposed TMDL as required by Section 303(d)(2) of the CWA, 33 U.S.C. § 1313(d)(2). That section provides, in part, that "[t]he Administrator shall either approve or disapprove [a TMDL] not later than thirty days after the date of submission."

Scott Pruitt, EPA Administrator
Jefferson Beauregard Sessions III, Attorney General
August 23, 2017
Page 2

Section 505 of the CWA provides that any citizen may sue EPA in federal court “where there is alleged a failure of the Administrator to perform any act or duty under [the CWA] which is nondiscretionary with the Administrator.” 33 U.S.C. § 1313(a)(2). In such a case, the District Court has jurisdiction to order the EPA Administrator “to perform such act or duty.” *Id.*

Because the EPA has failed to either approve or disapprove Washington’s Deschutes River TMDL within 30 days of the state’s submission, NWEA intends to sue the EPA in federal court to enforce the requirements of Section 303(d)(2) of the CWA, and to require EPA to act in a timely fashion.

As required by 40 C.F.R. § 135.3(b), the following are the name, address, and telephone number of the party providing this notice:

Northwest Environmental Advocates
P.O. Box 12187
Portland, OR 97212-0187
(503) 295-0490

As required by 40 C.F.R. § 135.3(c), the following are the name, address, and telephone number of NWEA’s legal counsel in this matter:

Bricklin & Newman, LLP
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Tel: (206) 264-8600
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Earthrise Law Center
Allison LaPlante, OSB No. 023614
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Scott Pruitt, EPA Administrator
Jefferson Beauregard Sessions III, Attorney General
August 23, 2017
Page 3

NWEA is open to engaging in a constructive dialogue to obtain a workable solution in this matter. If EPA has a similar interest it should immediately contact me as NWEA's counsel. Please expect NWEA to file suit upon the expiration of 60 days from the date of this notice.

Very truly yours,

BRICKLIN & NEWMAN, LLP



Bryan Telegin

cc: Client

Michelle Pirzadeh, Acting Regional Administrator
U.S. Environmental Protection Agency, Region 10
1200 6th Avenue
Seattle, WA 98101

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
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- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Scott Pruitt, Administrator
 U.S. Environmental Protection Agency
 Ariel Rios Building
 1200 Pennsylvania Avenue, N.W.
 Washington, D.C. 20460



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1. Article Addressed to: <div style="border: 1px solid black; padding: 5px; margin: 5px 0;"> Jefferson Beauregard Sessions III Attorney General U.S. Department of Justice 950 Pennsylvania Avenue, N.W. Washington, D.C. 20530-0001 </div>	B. Received by (Printed Name) <i>[Signature]</i>	C. Date of Delivery AUG 30 2017
2. Article Number (Transfer from service label) 7016 0910 0001 6892 3171	D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
 9590 9401 0164 5234 4197 30	3. Service Type <input type="checkbox"/> Adult Signature <input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Registered Mail™ <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery <input type="checkbox"/> Insured Mail <input type="checkbox"/> Signature Confirmation Restricted Delivery <input type="checkbox"/> Registered Mail Restricted Delivery (00)	
PS Form 3811, July 2015 PSN 7530-02-000-9053		Domestic Return Receipt

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<p>1. Article Addressed to:</p> <p>Michelle Pirzadeh Acting Regional Administrator U.S. Environmental Protection Agency Region 10 1200 6th Avenue Seattle, WA 98101</p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>
<p>2. </p>	<p>3. Service Type</p> <ul style="list-style-type: none"> <input type="checkbox"/> Adult Signature <input type="checkbox"/> Adult Signature Restricted Delivery <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Signature Confirmation Restricted Delivery
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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
Northwest Environmental Advocates
(b) County of Residence of First Listed Plaintiff Multnomah County, OR
(c) Attorneys (Firm Name, Address, and Telephone Number) See attached

DEFENDANTS
United States Environmental Protection Agency
County of Residence of First Listed Defendant
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT
REAL PROPERTY
TORTS
CIVIL RIGHTS
PRISONER PETITIONS
FORFEITURE/PENALTY
LABOR
IMMIGRATION
BANKRUPTCY
SOCIAL SECURITY
FEDERAL TAX SUITS
OTHER STATUTES

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District
6 Multidistrict Litigation

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
33 U.S.C. 1365
Brief description of cause:
Failure by EPA to undertake mandatory duty to act on state-submitted TMDL under 33 U.S.C. 1313(d)

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.
DEMAND \$ 0.00
CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY
(See instructions):
JUDGE
DOCKET NUMBER

DATE 11/06/2017
SIGNATURE OF ATTORNEY OF RECORD s/ Bryan Telegin

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

ATTACHMENT

Plaintiff's Attorneys

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AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of Washington

Northwest Environmental Advocates

Plaintiff(s)

v.

United States Environmental Protection Agency

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Bryan Telegin
Bricklin & Newman, LLP
1424 Fourth Avenue, Suite 500
Seattle, WA 98101

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: